

**REMARKS**

The final Office action mailed October 28, 2009, has been reviewed and these remarks are responsive thereto.

Applicants request amendment of claims 1, 25 and 35 to recite configuration such that displacements of the vibrator are not transmitted to the ultrasound probe. This feature was previously cited in claim 24, which claim previously depended from claim 1, and which is cancelled herein. Claim 1 is also amended to recite that the vibrator is communicatively coupled to the annular piece. Claims 32 and 33 are amended to replace “by means of” with “using.”

The Office action object to claims 31-34 as improper dependent claims and asserted that these claims fail the infringement test. Applicants respectfully traverse and request withdrawal of this objection. As stated by MPEP § 608.01(n)(III), “[t]he test as to whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends (35 U.S.C. 112, fourth paragraph) or in other words that it shall not conceivably be infringed by anything which would not also infringe the basic claim.” Each of method claims 31-33 requires that the apparatus according to claim 1 be used to perform the recited method. An infringer performing the method of any of claims 31-33 would necessarily use an apparatus within claim 1, and would thus necessarily infringe claim 1. See 35 U.S.C. § 271(a) (“whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent”)(underscore added). As also noted in MPEP § 608.01(n)(III), “[t]he fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper.”

Each of claims 1, 3-9, 11-17 and 35 stands rejected under 35 U.S.C. § 103 based on U.S. Patent 6,770,033 (Fink et al.) (“Fink”) in view of U.S. Patent 5,545,124 (Krause et al.) (“Krause”). Claims 18-23 and 25-31 stand rejected under 35 U.S.C. § 103 based on Fink in view of Krause and U.S. Pat. Application Pub. No. 2004/0064050 (Liu et al.) (“Liu”). Claims 32-34 stand rejected under 35 U.S.C. § 103 based on Fink in view of Krause, Liu and U.S. Patent 5,115,808 (Popovic et al.).

As indicated above, Applicants have amended independent claims 1, 25 and 35 to recite subject matter of canceled claim 24. In particular, these claims are amended to recite

configuration such that displacements of the vibrator are not transmitted to the ultrasound probe. The Office action does not identify any portion of the cited references teaching this feature, and Applicants have not found such a teaching. Notably, the primary embodiment of Fink on which the Office action relies (Fig. 2) is explicitly described by Fink as “necessarily involving motions of said probe” because of the shear wave generation by the loudspeaker 2. See Fink col. 8, lines 26-30.

Accordingly, and for at least the above reasons, claims 1, 25 and 35 are allowable. The remaining claims depend from one of claims 1, 25 or 35 are similarly allowable.

All rejections having been addressed, Applicants submit that this application is in condition for allowance and request early notification of same.

Respectfully submitted,

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